IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.
A.O. No. 272/2001
(FAFO NO. 519/1990)

1. Hiramani Semwal S/o Hari Ram Semwal
   R/o Village Gojmeer Patti Nagan Tehsil
   Tehri P.O. Chiniyalisaur, District Tehri Garhwal.
2. Shanti Prasad S/o Hari Ram
   R/o Village Gojeer Patti Nagan,
   Tehsil Tehri P.O. Chiniyalisaur,
   District Tehri Garhwal …Appellants.

Versus

1. Chattar Lal S/o Santh R/o Village Chambliya
   Chiniyalibour, P.S. Thana Dharash Uttarkashi.
2. Oriental Fire and General Insurance Co. Ltd.
   Dehradun Road, Rishikesh ..…. Respondents.

Sri Atul Bhatt, learned counsel for the appellants.
Sri T.A. Khan, learned counsel for the Insurance Company/respondent No.2.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 173 Motor Vehicle Act, 1988, has been preferred against the judgment and award dated 28-3-1990, passed by the Motor Accident Claim Tribunal, Uttarkashi in M.A.C.P. No. 7/1986, Chatar Lal Vs. Shanti Prasad and others.

2- Brief facts of the case are that Roshan Lal Runwasa son of the claimant Chatar Lal used to do labour work and was earning Rs. 600/- per month. On 2.2.85 Roshan Lal law as doing the work of loading the stones in Truck No. U.R.M. 3027 and in the evening the driver of the truck reversed the truck without blowing horn or giving any signal due to which Roshan Lal was crushed under the left rear tyre of the truck and his head was crushed badly, due to which he died at the spot. At the time of the accident the deceased was 21 years of age. The deceased was unmarried but his parents and one unmarried sister were dependents on the deceased Roshan Lal.

3- O.P. Nos. 1 and 2 / driver and owner of the offending truck filed W.S. and denied the allegations of the claim petition. They also alleged that the deceased was doing labour work with Sabbal Singh

and was getting Rs.10/- per day as labour charges. They also alleged that the accident occurred due to own fault of the deceased as he jumped from the truck and died at the spot. The truck was insured with Oriental Insurance Company and the Company is liable to pay compensation, if any.

4- The Oriental Fire and General Insurance Co. Ltd. filed its W.S. and repeated the assertions of the O.P. Nos. 1 and 2. It also alleged that the truck was not a passenger vehicle hence the company is not liable to pay the compensation as per the conditions of insurance policy.

5- The Tribunal on the basis of pleadings of parties framed following issues in the claim petition:-

1- Whether on 2.2.85 on Uttarkashi-Tehri motor road at Runwasa, deceased Roshan Lal died due to the rashness of the truck driver Shanti Prasad, as alleged by the claimants or he died due to his own fault as alleged by the opposite parties 1 and 2 in para- 13 of their W.S.?.

2- Whether at the time of accident, the truck driver reversed the truck without blowing horn or giving any signal, due to which the deceased was crushed by the truck when he was getting down from the truck, and his paijama was caught by the hook of the planks of the truck, as alleged by the O.Ps.?.

3- Whether the monthly income of the deceased was Rs. 600/- or Rs. 300/-?.

4- Whether the deceased was travelling in the truck as a passenger? If so, its effect?.

5- To what amount of compensation, the claimant is entitled to get?.

6- Thereafter both the parties adduced their evidence.

7- The Tribunal, after having assessed the evidence on record and hearing the learned counsel for the parties allowed the claim petition for a sum of Rs. 80,500/- along with interest @ 10% per annum. The

Tribunal directed the opposite parties to pay the amount of compensation to the claimant..

8- Feeling aggrieved the owner and driver of the offending truck has preferred this appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

9- Chatar Lal, the claimant/respondent also filed cross objection for enhancement of the compensation.

10. Heard learned counsel for the parties and perused the record.

11- The sole question involved in this case is as to whether the offending vehicle in question was insured with the respondent No.2, i.e. the Oriental Fire and General Insurance Co. Ltd. at the time of the accident or not?.

12- The record reveals that the owner and driver of the vehicle had filed their written statement before the Tribunal and they have specifically averred in paragrph-9 of the written statement that the offending truck in question was insured with Oriental Fire and General Insurance Co. Ltd. Branch Office Dehradun Road, Rishikesh at the time of the accident. The Oriental Fire and General Insurance Company has neither rebutted this pleading adduced by the owner of the vehicle nor have filed any document in rebuttal, therefore, in the absence of any rebuttal, adduced by the insurance company, it will be concluded that the offending vehicle was insured with Oriental Fire and General Insurance Co. Ltd. at the time of the accident.

13- Although the liability to pay the compensation is joint and several but since the offending truck was insured with Oriental Fire and General Insurance Company, respondent No.2, therefore the insurer has the liability to pay the amount of compensation awarded by the tribunal.

14- Learned counsel for the insurance company has also argued that the driver of the offending truck was not having valid driving licence in his possession at the time of the accident.

15- I do not find any force in the argument advanced by the learned counsel for the insurance company. The W.S. filed by the insurance company nowhere indicates that the insurance company has taken the plea that the driver of the offending truck was not having the valid driving licence.

16- It has also been submitted that the owner has not discharged his initial burden by filing the driving licence of the driver, therefore, the insurance company was not in a position to plead as to whether the driving licence was valid or not.

17- Again I do not find any substance in the argument advanced by the learned counsel for the insurance company. It is true that the owner of the vehicle has not filed any driving licence of the driver but merely by this fact the insurance company cannot deviate from its liability and in the instant case, the insurance company has not come up with the plea that the driver of the offending vehicle was not having valid driving licence at the time of the accident, hence, the argument raised by the learned counsel for the insurance company at this stage is devoid of any force.

18- In view of the aforesaid discussion, I am of the view that the amount of compensation awarded by the tribunal vide impugned judgment and award is to be paid to the claimant by the insurer of the vehicle, i.e., the respondent No.2, Oriental Fire and General Insurance Co. Ltd.

19- With the aforesaid observation the appeal is finally disposed of.

20- The Tribunal has rightly assessed the evidence in awarding the compensation in favour of the claimant and I do not find any infirmity and incorrectness in this regard. The cross objection filed by the claimant/respondent No.1 for enhancement of the compensation, stands rejected.

(B.C. Kandpal, J.)

Dated: 5-12-2006
ISB